

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GARRETT DRAKE,

Plaintiff,

Case No. 1:08-cv-452

v

HON. JANET T. NEFF

KEVIN H. DRAKE et al.,

Defendants.

JUDGMENT

This is a civil action filed pursuant to 4 U.S.C. §§ 101 & 102, 22 U.S.C. § 611 *et seq.*, and 28 U.S.C. § 1331. On June 18, 2008, the Magistrate Judge filed a Report and Recommendation, recommending that the action be dismissed upon initial screening pursuant to 28 U.S.C. § 1915A(b) on grounds that the complaint failed to state a claim. The matter is presently before the Court on Plaintiff's objection to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which an objection has been made. The Court denies the objection and issues this Judgment. See FED. R. CIV. P. 58.

Plaintiff argues that the Magistrate Judge erred in denying his right to file a habeas corpus petition. Plaintiff's argument is without merit. The Magistrate Judge properly concluded that because Plaintiff's complaint challenges the fact or duration of his sentence, Plaintiff's action should

be properly filed as a habeas corpus petition pursuant to 28 U.S.C. § 2254, rather than under 22 U.S.C. § 611 *et seq.*, 4 U.S.C. §§ 101 & 102, or 28 U.S.C. § 1331.

The remainder of Plaintiff's lengthy objection simply provides a historical discussion and expresses disagreement with the Magistrate Judge's decision. Plaintiff does not reveal any error by the Magistrate Judge.

For these reasons and because this action was filed *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Judgment would not be taken in good faith. See *McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

THEREFORE, IT IS ORDERED that the objection (Dkt 7) is DENIED and the Report and Recommendation (Dkt 5) is APPROVED and ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED that the Complaint (Dkt 1) is DISMISSED pursuant to 28 U.S.C. § 1915A(b) for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Date: October 22, 2008

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge